



STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

Department of Transportation	810	Materials	referred to as STATE and the following:
Agency Name	Agency Code	Division	
CONTRACTOR	Pavement Technologies A Division of ASTEC Inc.		LEGAL STATUS OF CONTRACTOR
	Name		Sole Proprietor
P.O. Box 1157 City Pond Road			Non-Profit Corporation
	Address		X For-Profit Corporation
Covington	GA	30015	Partnership
City	State	Zip Code	Government Agency
Wade Collins	(770) 388-0909		
Contact Person	Phone Number		
621586570	84096 A-B	93885000000	
Federal ID#	Vendor Number	Commodity Code(s)	

2. GENERAL PURPOSE OF CONTRACT:

Firm Fixed Price Contract for the Maintenance, Repair and Calibration on a Pavement Technology Inc. Asphalt Pavement Analyzer. Serial Number 98-009

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on a N/A  
Requisition # N/A, FY N/A, or the attached pre-approved sole source document #SS03061.

4. CONTRACT PERIOD: Effective date 11/01/02. Termination date 10/31/07, unless terminated early or extended in accordance with the terms of this contract. Renewal Options (if any) None.

5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$46,691.14 for costs authorized by this contract

6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.

ATTACHMENT B: Scope of Work.

ATTACHMENT C: Special Terms and Conditions

ATTACHMENT D: Sole Source Authorization

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

A. All other governmental laws, regulations or actions applicable to the goods and/or services authorized by this Contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

*Wade Collins*

Contractor's Signature

*Wade Collins*

Contractor's Name

*Wade Collins*

Title

STATE OF UTAH

*David K. Miles*

David K. Miles, Operations Engineer

*D. K. Miles*

Director, Division of Purchasing

Director, Division of Finance

The DOF will enter this contract on FI-NET prior to final review by Finance and Purchasing. While the review is pending a copy of this contract form with the number will be faxed to your agency.

Paul Kikuchi (801)-965-4073  
Person to Receive Faxed Copy Fax Number

ENT'D 08 2005

JUL 21 2005

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.
7. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
14. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
15. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, as far as distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

Attachment B  
Scope of Work

1.0 Scope of Work

This Contract is for the maintenance, repair and calibration of a Pavement Technology Inc. Asphalt Pavement Analyzer (APA), serial number 98-009 located at 4501 South 2700 West Salt Lake City, Utah. Calibration of this equipment will be for Rut Testing and Asphalt Fatigue Testing. Contractor will conduct 2 on-site visits per year to calibrate the APA and perform maintenance and repair as required. The test procedure refers to Part 8 Manual of Instruction – Materials Section 958 “Standard Test Method For Determining Rutting Susceptibility Using The Asphalt Pavement Analyzer”.

1.1 The following is a list of replacement parts covered by the contract at no charge.

Quantity Per Year Allowed	
3	Wheel cylinder Transducers-per-year BTL-5-ALL-MO102-P-S32 \$650.00 each <i>\$1,950.00</i> <i>we 10/01/02</i> <del>\$1900.00</del> maximum allowable per year.
2	Computer Boards-per-year C10DAS802/16 \$ 675.00 each \$1350.00 maximum allowable per year.
3	Wheel Cylinders-per year SMC NCAU200-0400-Xb5-99159CDN \$ 475.00 each \$ 1425.00 maximum allowable per year.
1	Slide Wire Transducer-per year TLH450 X 24” \$ 475.00 maximum allowable per year.
3	Air Regulators-per year SMC IR2020-N02 \$80.00 each \$240.00 maximum allowable per year.
6	Hose Fittings-per year PT 150983 \$ 3.68 each \$22.08 maximum allowable per year.
1	Valve Pack Module-per year. SPL D-SUB \$ 250.00 maximum allowable per year.
3	Transducer Cables PT#BKS-33M3 \$120.00 maximum allowable per year.

Attachment B  
Scope of Work

2.0 Pricing

- 2.1 10% off the list price on all Asphalt Pavement Analyzer parts not listed above. The parts prices are updated annually in the 1<sup>st</sup> quarter of the year. Each price list is dated using the current year. All parts are subject to change except for the parts listed in 1.1
- 2.2 This shall be a firm fixed five-year contract in the amount of \$46,691.14
- 2.3 If the above listed parts, labor costs and travel are not used within the “Extended Warranty Period, the outstanding balance shall be credited to UDOT and that credit used on the following years maintenance. If this falls on the last year of the “Extended Maintenance Program” a refund shall be issued and received at UDOT within 60 days.

Attachment C  
Special Terms and Conditions

**Asphalt Pavement Analyser Maintenance Contract**

**1.0 Responsibility For Wages.**

The Contractor shall be responsible for all applicable company wages in accordance with the federal, state and local laws and ordinances.

**2.0 Employment of State Employees.**

The CONTRACTOR agrees not to engage in any way the services on this contract of any present or former STATE employee who was involved as a decision maker in the selection or approval process or who negotiated and/or approved billings or contract modification for this contract.

**3.0 Quality of Services.**

Contractor represents to STATE that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.

**4.0 Assignment and Subcontracting.**

The CONTRACTOR shall not sublet, assign or transfer any part of this contract without prior written approval from STATE. Neither shall the provision of monies due under this contract be assignable without prior written approval of STATE.

**5.0 Failure to Complete.**

At any time the CONTRACTOR determines the contract work cannot be completed within the specified time or budget, the CONTRACTOR must notify the STATE in writing, immediately.

**6.0 Complete Delivery.**

Delivery shall not be deemed to be complete until the goods and services have been actually received and accepted by STATE.

**7.0 Licenses and Certification.**

The Contractor, the Contractors personnel and the Contractors equipment shall be in compliance with all laws and regulations for Licensing and Certification from all governing agencies.

**8.0 Acceptance of Goods Not a Waiver.**

The acceptance of goods described in this contract shall not constitute a waiver of any right of action that the State may have for breach of warranty or any other cause.

**9.0 No Guarantee to Purchase** State does not guarantee to purchase any amount under this contract. Estimated contract amounts are not to be construed as a guarantee to purchase any services.

Attachment C  
Special Terms and Conditions

**10.0 Travel Expense Per Diem**

All travel into the State shall be based on the State of Utah per diem for:

Lodging

Transportation

Phone Usage

Meals

A copy of the State expense allowance shall be provided upon request.

**11.0 Contacts for Customer Service at:**

Pavement Technology – A Division of ASTEC Inc.

P.O. Box 11157 City Pond Road

Covington, Georgia 30015

Contact: Wade Collins

Phone: (770)-388-0909

Fax (770)-388-0149

E-Mail [wadec@pavementtechnologies.com](mailto:wadec@pavementtechnologies.com)

**12.0 Contacts for Utah Department of Transportation:**

4501 South 2700 West

Box 148290

Salt Lake City, UT. 84114-8260

Quality Assurance Engineer

Troy Peterson

Phone 801-965-3814

Fax 801-965-4101

E-Mail [tpeterson@utah.gov](mailto:tpeterson@utah.gov)

Material Engineering Specialist

Steven Niederhauser

Phone 801-965-4293

Fax 801-965-3843

E-Mail [sniederhouser@utah.gov](mailto:sniederhouser@utah.gov)

Purchasing, Paul Kikuchi

Phone 801-965-4071

Fax 801-965-4073

E-Mail [pkikuchi@utah.gov](mailto:pkikuchi@utah.gov)

Attachment C  
Special Terms and Conditions

**13.0 Invoicing to:**

Steven Niederhauser  
4501 South 2700 West  
Box 148290  
Salt Lake City, UT. 84114-8260  
E-Mail [sniederhouser@utah.gov](mailto:sniederhouser@utah.gov)

All invoices must note the purchase order number.  
Payment shall be made via U.S. Postal Service

State  
Division of  
Sole Source

## Division of Purchasing Tracking

#SS03061

Sole Source Procurement is an option only if a purchase requirement is reasonable available from a single supplier, or if it otherwise qualifies under Utah Administrative Code R33-3-4. SEE PAGE TWO OF THIS FORM FOR TEXT OF THE RULE.

ATTACH THIS COMPLETED FORM TO THE PURCHASE REQUISITION DP-1 WHEN SUBMITTING A REQUEST FOR SOLE SOURCE PURCHASE BY PURCHASE ORDER, BUT IF PURCHASE IS TO BE MADE BY AN AGENCY CONTRACT, SUBMIT THIS FORM FOR PRIOR APPROVAL BEFORE CONTRACT NEGOTIATIONS.

AGENCY REQUESTING AUTHORIZATION: \_\_\_\_\_ Department of Transportation

CONTACT PERSON: \_\_\_\_\_ Paul Kikuchi \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_ 801-965-4071

## ITEM(S) TO BE PURCHASED:

5 Year Maintenance for "Asphalt Pavement Analyzer" Serial Number 98-009	

APPROXIMATE COST OF ITEM(S): \_\_\_\_\_ \$50,000.00

RECOMMENDED VENDOR OR CONTRACTOR: \_\_\_\_\_ Pavement Technologies

CONTACT PERSON: \_\_\_\_\_ Wade Collins \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_ 770-388-0909

ADDRESS: \_\_\_\_\_ P.O. Box 11157 City Pond Road \_\_\_\_\_ CITY: \_\_\_\_\_ Covington \_\_\_\_\_ ST: GA ZIP: \_\_\_\_\_ 30015

FEDERAL ID#(TIN) or SOCIAL SECURITY #: \_\_\_\_\_ 621586570  
(Must be 9 digits-numeric) (If SS#, must have person's name as it appears on Social Security card)

## TYPE OF VENDOR: (Check one)

<input checked="" type="checkbox"/> 1-Corporation	<input type="checkbox"/> 3-Proprietorship/individual	<input type="checkbox"/> 5-Government-exempt
<input type="checkbox"/> 2-Medical Provider (all types)	<input type="checkbox"/> 4-Partnership	<input type="checkbox"/> 6-Other _____

SOLE SOURCE STATUS DETERMINED AS FOLLOWS: (List all vendors or contractors contacted and describe criteria used to determine sole source status of the one recommended - - ATTACH ADDITIONAL PAGES IF MORE SPACE IS NEEDED.)

Vendor	Description of criteria
Pavement Technologies Inc.	This is a sole source request as Pavement Technologies Inc. is the developer and sole distributor for the Asphalt Pavement Analyser.

REQUESTED BY: Paul Kikuchi

Agency Signature \_\_\_\_\_ Date \_\_\_\_\_  
Director of Administrative Services

APPROVED: \_\_\_\_\_

Douglas G. Richins, Director  
Division of Purchasing

SEP 04 2002  
Date





State of Utah  
Division of Purchasing  
Sole Source Request

Tracking # EY05-135.

New

SS For Agency Contract

Sole Source Procurement is an option only if a purchase requirement is reasonable available from a single supplier, or if it otherwise qualifies under Utah Administrative Code R33-3-4. **SEE PAGE TWO OF THIS FORM FOR TEXT OF THE RULE.**

**ATTACH THIS COMPLETED FORM TO THE PURCHASE REQUISITION DP-1 WHEN SUBMITTING A REQUEST FOR SOLE SOURCE PURCHASE BY PURCHASE ORDER, BUT IF PURCHASE IS TO BE MADE BY AN AGENCY CONTRACT, SUBMIT THIS FORM FOR PRIOR APPROVAL BEFORE CONTRACT NEGOTIATIONS.**

AGENCY REQUESTING AUTHORIZATION: \_\_\_\_\_ Department of Transportation

CONTACT PERSON: \_\_\_\_\_ Paul Kikuchi \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_ 801-965-4071

ITEM(S) TO BE PURCHASED:

5 Year Maintenance for "Asphalt Pavement Analyzer" Serial Number 98-009	

APPROXIMATE COST OF ITEM(S): \_\_\_\_\_ \$50,000.00

V#

RECOMMENDED VENDOR OR CONTRACTOR: \_\_\_\_\_ Pavement Technologies 84096A-B.

CONTACT PERSON: \_\_\_\_\_ Wade Collins \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_ 770-388-0909

ADDRESS: \_\_\_\_\_ P.O. Box 11157 City Pond Road \_\_\_\_\_ CITY \_\_\_\_\_ Covington \_\_\_\_\_ ST: GA ZIP: 30015

FEDERAL ID#(TIN) or SOCIAL SECURITY #: \_\_\_\_\_ 621586570  
(Must be 9 digits-numeric) (If SS#, must have person's name as it appears on Social Security card)

TYPE OF VENDOR: (Check one)

<input checked="" type="checkbox"/> 1-Corporation	<input type="checkbox"/> 3-Proprietorship/individual	<input type="checkbox"/> 5-Government-exempt
<input type="checkbox"/> 2-Medical Provider (all types)	<input type="checkbox"/> 4-Partnership	<input type="checkbox"/> 6-Other _____

**SOLE SOURCE STATUS DETERMINED AS FOLLOWS:** (List all vendors or contractors contacted and describe criteria used to determine sole source status of the one recommended - - ATTACH ADDITIONAL PAGES IF MORE SPACE IS NEEDED.)

Vendor	Description of criteria
Pavement Technologies Inc.	This is a sole source request as Pavement Technologies Inc. is the developer and sole distributor for the Asphalt Pavement Analyser.

REQUESTED BY: Paul Kikuchi

APPROVED:

Agency Signature  
Director of Administrative Services

Date

Douglas G. Richins, Director  
Division of Purchasing

Date

UTAH ADMINISTRATIVE CODE  
R33-3-4  
SOLE SOURCE PROCUREMENT

3-401 Conditions for Use of Sole Source Procurement

Sole source procurement shall be used only if a requirement is reasonably available from a single supplier. A requirement for a particular item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.

Examples of circumstances which could necessitate sole source procurement are:

- (1) where compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) procurement of items for resale;
- (4) procurement of public utility services.

The determination as to whether a procurement shall be made as a sole source shall be made by the procurement officer. Each request shall be submitted in writing by the using agency. Such officer may specify the application of such determination and its duration. In cases of reasonable doubt, completion should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

## **Sole Source Justificaton**

Utah Department of Transportation (UDOT) is requesting a contract with Pavement Technologies Inc. for the maintenance of our Asphalt Pavement Analyzer (APA). The use of the APA is a State wide requirement to test and evaluate all asphalt mixes that will be used on Utah roads. The test procedure refers to Part 8 Manual of Instruction – Materials Section 958 “Standard Test Method For Determining Rutting Susceptibility Using The Asphalt Pavement Analyzer”. This testing method has been approved by the Federal Highway Administration and is presently before AASHTO & ASTM for approval.

### **1.0 Scope of Work**

UDOT will enter into a five-year contract with Pavement Technologies for the maintenance, repair and calibration of our Asphalt Pavement Analyzer. The calibration will be for the Rut Test in the Asphalt Pavement Analyzer and soon asphalt fatigue testing. The goal of this contract is to have the APA always in service, calibrated, with minimal down time.